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MICHAEL RODAK, JR., CLERK

No. 78-1526

In the Supreme Court of the United States

OCTOBER TERM, 1978

KEITH A. ABEL, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF CLAIMS*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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Petitioners contend that they are entitled to damages for a breach of contract that allegedly occurred when the United States Army Development and Readiness Command (DARCOM) changed the features of a civilian engineer training program in which petitioners were participants.

1. In 1957, in order to eliminate a perceived shortage of engineers in certain fields, the Army Materiel Command, now DARCOM, established a five-year training and employment program for persons who had earned an undergraduate engineering degree. The first two years of the program involved advanced engineering education. The first year of instruction was provided by Army personnel. During the second year participants were enrolled in a graduate level engineering program at Texas

A&M University. On successful completion of this portion of the program, participants received master's degrees in engineering from Texas A&M. They were then committed to work for three years as civilian employees of DARCOM. The statutory authority for DARCOM's use of non-government facilities in the training of its employees was provided by 5 U.S.C. 4105 and 4108 and the predecessors of those sections.

Petitioners applied for admission to DARCOM's program, were accepted, and began their training in 1975, after signing a document entitled "Employment and Mobility Agreement for AMC [*i.e.*, Army Materiel Command] Interns." In the same year, the House Appropriations Committee reviewed DARCOM's program and concluded that the shortage of engineers no longer existed and that the provision of advanced engineering training at government expense was not necessary to ensure an adequate supply of engineers for the Army's needs. See H.R. Rep. No. 94-517, 94th Cong., 1st Sess. 63 (1975). Accordingly, Congress cut the funds for the DARCOM program from Defense Department appropriations.

As a consequence, DARCOM was unable to cover the university expenses associated with its program. DARCOM altered the program to provide instruction by Army personnel in both training years and thereby eliminated the opportunity for participants to obtain master's degrees from Texas A&M. Persons already in the program who did not wish to continue under the changed format were permitted either to take a leave of absence to complete their graduate training or to terminate their commitment altogether. Dissatisfied with the available options, petitioners brought this suit in the United States Court of

Claims. They asserted that DARCOM breached its contract with them and that they are entitled to damages as a result.

On cross motions for summary judgment, the Court of Claims held that "the pay and allowances of a federal employee are statutory and not contractual" and that "the statutory provisions * * * under which this type of training program is authorized * * * make no provision for any right of the kind here asserted" (Pet. App. 13). Alternatively, the court assumed that the employment agreement signed by petitioners was an enforceable contract; the court then held that the agreement does not obligate the Army to provide university training or an advanced degree (Pet. App. 13-14). The agreement states (*ibid.*; emphasis supplied by the court):

It is understood that I will *be provided such training, rotational assignments, and schooling as the Army Materiel Command may determine is necessary for my development in my career field.*

I recognize that the Army Materiel Command may terminate this agreement at any time, by issuing a notice to that effect, *for such reasons as changes in program requirements, inadequate performance, or misconduct on my part.*

These provisions, the court held, permitted DARCOM to alter the training program without incurring any obligation to the participants.

2. The Court of Claims correctly held that petitioners have no enforceable right to the university phase of the training program. The relevant statute, 5 U.S.C. 4105, does not create a right to obtain education or training from a private contractor. Rather, the statute merely authorizes federal agencies to contract for the use of non-

government facilities in training federal employees. When Congress decided that the use of such a contract for the training of Army engineers was economically inefficient, DARCOM was free to terminate its relationship with Texas A&M without violating any of petitioners' statutory or contractual rights.

The agreement signed by petitioners did not confer any right to a university education or degree. On the contrary, DARCOM reserved the right to change or cancel the training program based on Army needs or requirements. As events transpired, DARCOM was forced to change its program by reason of Congress' appropriations action. Under these circumstances, DARCOM did not breach any contractual agreement when it terminated its relationship with Texas A&M.

Petitioners' reliance on *United States v. Larionoff*, 431 U.S. 864 (1977), is unwarranted. That case involved the question whether the Navy could reclassify certain occupational specialties and thereby deprive certain enlistees of the reenlistment bonus they expected when they agreed to serve an additional term. This Court held that the Navy regulations permitting such a practice were inconsistent with the congressional intention to create a definite reenlistment bonus capable of determination at the time of reenlistment. No such statutory entitlement is involved here, and indeed, by cutting the appropriations for the DARCOM program, Congress explicitly indicated that it did not expect government-financed university training for Army engineers to continue.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JUNE 1979